Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)	)	AU Docket No. 17-182
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF SACRED WIND COMMUNICATIONS, INC.

Sacred Wind Communications, Inc. ("Sacred Wind") respectfully submits these comments in response to the August 4, 2017 Public Notice in the referenced proceeding seeking comment on proposed competitive bidding procedures for the Connect America Fund Phase II Auction.[1]

INTRODUCTION AND SUMMARY

As discussed more fully below, the package bidding rules for the CAF Phase II Auction must be robust enough to allow bidders, such as those using fixed wireless technologies, to account for interdependencies between and among census block groups in a package, where support for less than the total package would be assigned to the bidder. Tribal areas, such as those served by Sacred Wind, are characterized by sparsely populated, expansive geographic territories, difficult topography and vexing siting processes. Relying exclusively on a "minimum scale percentage," as proposed in the Public Notice to assign a subset of a bidding package,[2]

[1] Public Notice, *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903),* AU Docket No. 17-182, WC Docket No. 10-90, FCC 17-101 (rel. Aug. 4, 2017)("Auction Procedures Public Notice").

[2] *Id.*, ¶¶ 90-92.

ignores important geographic interdependencies endemic to the deployment of fixed wireless technologies, which, compared to wireline distribution facilities, are uniquely-well suited to bring broadband to Indian country. In addition, in terms of bidder financial qualifications, Sacred Wind believes that the Time Interest Earned Ratio (or "TIER") proposed by the Commission as one of the financial metrics to be "scored" on the Commission's proposed five-point financial scale, is not a relevant consideration to a bidder's financial qualifications to build-out supported areas, and should be replaced with another measure.

DISCUSSION

A. Background on Sacred Wind.

Sacred Wind is a privately owned, New Mexico-based corporation formed in 2004 to introduce basic telephone and broadband services to the many thousands of unserved and underserved homes on the Navajo Reservation and near-Reservation lands in New Mexico, as well as to Navajo schools, businesses, and government locations, such as local Chapter houses. Sacred Wind is the only non-tribally owned rural local exchange carriers ("RLEC") in the country wholly dedicated to serving a Tribal community, having developed a basic local and broadband infrastructure over a vast unserved Tribal area of the West.[3]

In 2006, the company acquired from Qwest Corporation ("Qwest") a portion of Qwest's service territory comprising approximately 3,200 square miles in northwestern New Mexico on the Navajo Reservation and near-Reservation lands known as the "checkerboard," as well as limited Qwest copper loop facilities in this territory. Sacred Wind serves a population of approximately 23,300, ninety-eight (98) percent of whom are Navajo citizens.

The population density of its service territory is about 7.3 people per square mile, one of

[3] Sacred Wind has a unique relationship with the Navajo Nation, with its Navajo customers, and has won national and local recognition for its approach to serving residents in a challenging geographic area.

the most sparsely populated areas in the country. A disproportionate number of Navajo households are at or below the national poverty level. The Navajo population at large is among the highest at risk in the nation for school dropout, teen pregnancy, infant mortality, teen suicide, heart disease and diabetes.

Last-mile wireline technologies are particularly ill-suited for remote Tribal lands, such as Sacred Wind's service territory. In general, the sparse population over a vast land area makes deployment of a wired telecommunications network cost prohibitive. For that reason, Sacred Wind has built out an alternative to a wireline network that still allows Sacred Wind to bring voice and broadband services to its service area. That alternative is an IP-based hybrid fiber/point-to-point microwave backbone network integrated with a 3.65 GHz WiMAX fixed wireless local loop ("FWLL") access network.

For remote subscribers, the FWLL system replaces the typical copper, twisted pair distribution system with a point-to-multipoint radio access network operating on a 3.65 GHz WiMax platform. System reliability on its network approaches the network reliability of Tier 1 providers – 99.999 percent reliability (or downtime of 5 minutes per year).[4] Sacred Wind is also operating an all-IP network, using IP-based Ethernet transmission across its entire network, including the last mile, using WiMAX IEEE 802.16 equipment.

At the time of Sacred Wind's acquisition of Qwest Corporation's system on Navajo lands in late 2006, only 42 residential and business customers, less than 2 percent of Sacred Wind's acquired customer base, living along the municipal boundaries of Gallup and Farmington, New Mexico, had access to DSL services at download rates between 256 Kbps and 512 Kbps. Today,

[4] Sacred Wind is a carrier of last resort for 6,300 households, meaning that it cannot terminate or withdraw from providing telephone service unless the New Mexico Public Regulatory Commission ("PRC") finds that another telecommunications company is able to provide service without interruption. No other such company exists in Sacred Wind's service area at this time.

the use of WiMAX technology and the managed nature of IP transmission throughout the Sacred Wind network provide residential subscribers with wireline quality service and broadband speeds of 4 Mbps download, or higher, and some customers have access to 10/1 Mbps service. Having built a middle and last mile fixed wireless network interfaced with the older copper landlines that it acquired in 2006, and recently reinforced in areas with fiber optic middle mile, Sacred Wind has achieved its initial objectives of offering basic and advanced telecommunications services to nearly 90 percent of the Tribal homes in its service territory that have electric service. This increasing trend in broadband penetration is reflected in Sacred Wind's 2017 Form 477 filings, which lists 2235 new census blocks with 10/1 Mbps capability. As reflected in the preliminary list and map of eligible census blocks for the CAF Phase II auction, numerous census blocks adjacent to or near Sacred Wind's service territory are currently unserved and listed as eligible for CAF Phase II support, and would be uniquely well-suited to be served using FWLL technologies.[5]

Deploying a fixed wireless broadband network in Indian country is not without its challenges, and as discussed below, the Commission's package bidding procedures must specifically include a process that will allow bidders to recognize interdependencies between and among census block groups where only a subset of a package would be assigned to a bidder due to geographic overlaps in competing bids. In particular, in order to use fixed wireless facilities for the deployment of broadband and voice services in Indian country, providers must navigate a patchwork of approvals from various federal agencies as well as from tribal authorities to site fixed wireless facilities, bring utilities to those facilities, and deploy fiber in the network. For Sacred Wind, the approval process for siting its facilities and accessing rights of way, has

[5] *See* Public Notice, *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction*, 31 FCC Rcd 8870 (WCB 2016).

represented the most vexing and single greatest impediment to the efficient and rapid deployment of broadband facilities to its Navajo subscriber base.[6] These considerations, along with topography and subscriber locations, will often be determinative of where particular types of facilities might be sited, and establish important interdependencies between census block groups that bidders must be allowed to account for through the package bidding rules.

B. The Package Bidding Rules Must Make Provision for Situations Where Spectrum Block Groups are not Fungible or there are Interdependencies Between or Among Groups.

The Commission proposes that the minimum geographic area for bidding will be a census block group, which will be comprised of one or more census blocks, and proposes to allow package bidding, whereby a bidder specifies a list of census block groups that it will bid on.[7] To account for situations where bidders specify packages with overlapping groups, and a bidder may not be assigned support for all of the census groups in its bid, the Commission proposes a minimum bidder-specified scale percentage, whereby the bidder would agree to serve any subset of areas in the package "as long as the funding associated with the assigned areas is at least equal to a bidder-specified percentage of the funding requested" for the entire package.[8]

The Commission proposes this maximum-specified percentage at 80%, allowing a bidder to specify a "minimum scale percentage" at that level or below.[9] Thus, as explained by the Commission, a package bid would be "an offer by the bidder to serve any subset of areas in the

[6] The company has applied for rights of way and easements for fiber optic cable, copper wire, fixed wireless tower and monopole sites on (i) Navajo trust and fee lands; (ii) federal government land managed by the Bureau of Indian Affairs ("BIA"), Bureau of Land Management, and United States Forest Service; (iii) State of New Mexico lands, including state transportation department easements, county roadways, city government easements, and city-owned utility poles; and (iv) private lands – the so-called "checkerboard" patchwork of land ownership that changes land section-by-section from one jurisdiction to the next over its Navajo service territory.

[7] Auction Procedures Public Notice, ¶¶ 12, 90.

[8] *Id.*, ¶ 90.

[9] *Id.*, ¶ 92.

list at the support amount implied at the bid percentage, provided that the ratio of the total implied support of the subset to the total implied support of the list meets or exceeds the bidder-defined minimum scale percentage."[10]

The problem with this approach is that it treats all census block groups within a package as essentially fungible, with the sole determining factor for the bidder, whether it will receive a minimum percentage of support for serving some subset of the package. This ignores the fact that for a fixed wireless network, and, in particular, one being deployed to serve Indian country spread over difficult terrain and an expansive geographic area, there will be significant differences in the facilities that will be deployed in particular census block groups, based on topography, permitting considerations, and the location of subscriber premises, among other considerations.

Thus, for example, a particular census block group might be essential to the deployment, because based on permitting considerations, topography, and proximity to fiber facilities, it is the only location where a tower may be erected that can serve facilities in other census block groups. Still, other census block groups might be suitable for the location of smaller aggregation points that are necessary to serve subscriber locations that are located in a third census block group. Yet subscribers in that third census block group, would not be served if the first two census blocks were unsupported and remained unbuilt. And if the census block group where the main tower or towers were to be located was unsupported, then that would jeopardize the remaining network.

The proposed package bidding procedures, however, fail to account for these types of situations, where a bidder's ability to serve a particular census block group or set of census

[10] *Id.*

blocks groups is reliant upon the ability to serve one or more other census block groups. For example, a proposed package may contain census block groups A-H, where the ability to serve groups C, D, and E is dependent upon facilities being deployed in census block group A. If census block A were not available to the bidder due to it being assigned to another bidder, than the bidder would not be able to serve groups C, D, and E, yet those census block groups would still be assigned to the bidder.

Thus, in addition to the proposed package bidding procedures that rely exclusively on a minimum scale percentage, Sacred Wind proposes that the Commission include a contingency bidding option. In a contingency bidding process, a bidder could identify any contingent census block groups within a proposed package. Again, using the above examples of census block groups A-H, a bidder could identify assignment of census block groups C, D, and E as contingent upon assignment of census block group A. If overlap existed with census block group A such that it was assigned to another bidder, the bidder would not be assigned groups C, D and E, but would still be assigned groups F, G and H which were not contingent on the assignment of group A.

In this manner, a bidder would be able to account for interdependencies between census block groups, where build-out of one or more groups is dependent on the build-out of, and hence receipt of CAF Phase II support for, another group. The minimum scale percentage approach proposed by the Commission, alone, is not sufficiently nuanced or robust to account for these type of interdependencies. It should instead be supplemented with a contingency bidding package approach, which would allow a bidder to identify contingent census block groups within a proposed package of census block groups, and would allow a bidder to account for these types of interdependencies.

C. The Commission Should Reject the Use of a Provider's TIER as a Scored Factor in Determining Financial Qualifications.

The Auction Procedures Public Notice, in order to assist staff in evaluating bidder financial qualifications, proposes that applicants respond to a specified financial question, and submit four specified financial metrics.[11] These would be assessed on a five-point scale, with one point being assigned to each response that met specified criteria. If the total for the five responses was three points or greater, the bidder would be deemed financially qualified to participate in the auction. A bidder with a score of less than three would be subjected to a more in-depth financial review.[12] One of the financial metrics proposed by the Commission is the "Time Interest Earned Ratio" or TIER ((net income plus interest expense)/interest expense), which represents a company's loan obligation in relation to its annual income. The Commission proposes that a TIER greater than or equal to 1.25 would receive one point.[13]

TIER, as calculated adding a company's annual net income and loan interest payments and then dividing by the interest payments, is a lending company's consideration of a borrower's ability to pay down a loan. It is not an accurate depiction of a company's financial resources and has no relevance at all for companies that have no outstanding debt, or to a company's ability to complete a construction project and provide service. And, especially for companies that have recently borrowed money to build infrastructure, and who have succeeded in building new infrastructure, TIER can surface as a contrary measure of a company's financial resources, when it is not truly indicative of a company's financial strength.

This is because net income is calculated after subtracting the value of depreciation and depreciation is high for companies investing significantly in new infrastructure. Thus, the

[11] *Id.*, ¶ 58.

[12] *Id.*

[13] *Id.*, ¶ 59.

greater the depreciation, the lower a company's net income. Depreciation, however, is an accounting entry that, while reducing net income, is carried to the balance sheet as cash. Thus, the greater the depreciation, the greater the amount of cash a company accrues.

Therefore, for the Commission's purposes in considering a company's ability to build the infrastructure required in the CAF II program, TIER is only relevant if depreciation is not included in the income calculation. A simpler measure of a company's ability to perform as a CAF II recipient would be to add the company's previous year's income to total retained earnings, disregarding TIER altogether.

CONCLUSION

For the foregoing reasons, the proposed package bidding rules must be robust enough to allow bidders to account for interdependencies between and among census block groups where support for less than the total package would be assigned to the bidder. Relying exclusively on a "minimum scale percentage," as proposed in the Public Notice to assign a subset of a bidding package, ignores important geographic interdependencies endemic to the deployment of fixed wireless technologies on Tribal lands, and the Commission in its package bidding rules, must include a contingency bidding option, that allows a bidder to identify contingent census block groups within a proposed package. In addition, in terms of bidder financial qualifications, Sacred Wind believes that the TIER proposed by the Commission as one of the financial metrics to be "scored" on the Commission's proposed five-point financial scale, is not a relevant

consideration to a bidder's financial qualifications to build-out supported areas, and should be replaced with another suitable measure.

Respectfully submitted,

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